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8 Attorneys for Plaintiff
9 Buddha Boy Foods, Inc.

10 IN THE UNITED STATES DISTRICT COURT
11 THE SOUTHERN DISTRICT OF CALIFORNIA

12 BUDDHA BOY FOODS, INC., a California
13 corporation,

14 Plaintiff,

15 v.

16 RAKI RAKI & CO., a California corporation,

17 Defendant.

18 Case No.: '16CV2037 H DHB

19 **COMPLAINT**

20 **DEMAND FOR JURY TRIAL**

1 Plaintiff Buddha Boy Foods, Inc. (“Buddha Boy”) files this Complaint against Defendant
2 Raki Raki & Co. (“Raki Raki” or “Defendant”), alleging as follows:

3 **NATURE OF ACTION**

4 1. This is an action for trademark infringement and false designation of origin arising
5 under the Lanham Act, 15 U.S.C. §§ 1051, et seq., and for trademark infringement and unfair
6 competition under the laws of the State of California.

7 2. Buddha Boy owns and operates a chain of restaurants that feature sushi burritos
8 under the name Sushirrito® and uses the SUSHIRRITO mark (the “SUSHIRRITO Word Mark”)
9 and a stylized logo (the “SUSHIRRITO Logo”) (collectively, the “SUSHIRRITO Marks”) in
10 connection with its restaurants.

11 3. Defendant owns and operates a restaurant that also features sushi burritos under the
12 name Pokirrito, and uses the POKIRRITO mark (the “POKIRRITO Word Mark”) and a stylized
13 logo (the “POKIRRITO Logo”) (collectively, the “Infringing Marks”) in connection with its
14 restaurant.

15 4. Defendant’s use of the Infringing Marks in connection with its restaurant infringes
16 upon the SUSHIRRITO Marks. As depicted below, the similarities between the SUSHIRRITO
17 Marks and the Infringing Marks are apparent: (i) the SUSHIRRITO Word Mark and POKIRRITO
18 Word Mark are both composite marks, of which the first element, *i.e.*, “SUSHI” or “POKI,”
19 consists of a term that the general consuming public typically associates with sushi or raw fish,
20 and of which the second element, *i.e.*, “RRITO” refers to a burrito; and (ii) the SUSHIRRITO
21 Logo and POKIRRITO Logo are the same shapes, featuring concentric circles with orange, green,
22 and yellow shapes against a white center. Moreover, Defendant uses the Infringing Marks in
23 connection with services identical to the types of services offered by Buddha Boy under the
24 SUSHIRRITO Marks.

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	Sushirrito Marks	Infringing Marks
Word mark	SUSHIRRITO	POKIRRITO
Word/design mark		
Design mark		

PARTIES

5. Buddha Boy is a California corporation, with its principal place of business in San
15 Francisco, California. Buddha Boy owns and operates several sushi burrito restaurants in the San
16 Francisco Bay Area.

6. On information and belief, Defendant is a California corporation with its principal
18 place of business in San Diego, California. On information and belief, Defendant owns and
19 operates a sushi burrito restaurant in San Diego, California.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a),
22 and 15 U.S.C. § 1121 because it arises under the Lanham Act, 15 U.S.C. §§ 1051, *et*
23 *seq.* Jurisdiction over the California common law claims is also appropriate as these claims are so
24 related to the claims brought under the Lanham Act that they form part of the same case or
25 controversy, and hence fall within the scope of this Court's supplemental jurisdiction pursuant to
26 28 U.S.C. § 1338(b) and 1367.

1 8. This Court has personal jurisdiction over Defendant in that it does business and
2 resides in the State of California, and in the Southern District of California.

3 9. Venue is proper in the Southern District of California pursuant to 28 U.S.C. §
4 1391(b) because a substantial part of the events giving rise to these claims occurred in the
5 Southern District of California, and because Defendant is subject to personal jurisdiction in this
6 District.

FACTUAL BACKGROUND

Buddha Boy's Business and Intellectual Property Rights

9 10. Buddha Boy founded a restaurant under the name Sushirrito in 2011 in downtown
10 San Francisco, California, serving made-to-order, hand-held sushi burritos in a fast casual format.

11 11. Since founding Sushirrito, Buddha Boy has expanded Sushirrito restaurants to five
12 locations, four in downtown San Francisco, California and one in Palo Alto, California.

13 12. Buddha Boy has plans to expand Sushirrito into new markets not only beyond the
14 San Francisco Bay Area into Southern California, but also beyond the State of California. Buddha
15 Boy has taken several concrete steps towards expanding its business into Southern California, and
16 has plans to open its first Sushirrito location in Los Angeles, California by the end of
17 2017. Buddha Boy also intends to expand its Sushirrito restaurants to San Diego, California
18 within the next three years. Moreover, Buddha Boy expects to open its first Sushirrito outlet
19 outside of California, in New York City, New York, this month, and has impending plans to open
20 a second location in New York City as early as October, or by the end of this year.

21 13. Since its inception in 2011, Buddha Boy's Sushirrito restaurants have been
22 prominently featured and recognized in several national news publications, such as *The Wall*
23 *Street Journal* and *The Huffington Post*, for its sushi burrito concept.

24 14. Buddha Boy owns a number of trademarks that it uses extensively in connection
25 with its Sushirrito restaurants. Buddha Boy is the owner of the entire right, title, and interest in
26 and to the following federally-registered SUSHIRRITO Marks. In addition, SUSHIRRITO word
27 mark (Reg. No. 3,970,925) has achieved incontestable status and therefore this registration
28 provides conclusive evidence of Buddha Boy's rights in the SUSHIRRITO mark:

	Trademark	Registration No.	Registration Date	Goods
1	SUSHIRRITO	3,970,925	May 31, 2011	Restaurant services
2		4,056,156	November 15, 2011	Carry-out restaurants; restaurant services; take-out restaurant services
3		4,628,645	October 28, 2014	Restaurant services; take-out restaurant services

10 15. In addition to its U.S. federal registrations, Buddha Boy has also engaged in
11 substantial efforts to register its SUSHIRRITO Marks internationally. Buddha Boy has also either
12 registered or has pending registrations of its SUSHIRRITO Marks in Australia, Belarus, Brazil,
13 Canada, China, EU, Hong Kong, Japan, Mexico, Norway, Peru, Russia, Singapore, South Korea,
14 Spain, Taiwan, and the United Arab Emirates.

15 16. Since 2011, Buddha Boy has used the SUSHIRRITO Marks in connection with the
16 advertising and promotion of its Sushirrito restaurants, and the SUSHIRRITO Marks have been
17 featured prominently in such advertising and promotional activities. Buddha Boy has spent a
18 considerable amount promoting and marketing its SUSHIRRITO Marks and the Sushirrito brand
19 on both a local and national level. As part of its marketing and promotional efforts, Buddha Boy
20 uses the SUSHIRRITO Marks extensively on social media, including Facebook, Instagram, and
21 Twitter. Additionally, and as a component of its social media marketing campaign, Buddha Boy
22 frequently and consistently uses its SUSHIRRITO Word Mark as a hashtag on Facebook,
23 Instagram, and Twitter.

24 17. As a result of Buddha Boy's marketing and promotion of the SUSHIRRITO Marks
25 and Sushirrito brand, the SUSHIRRITO Marks have become associated with Buddha Boy's
26 Sushirrito restaurants and brand in the minds of consumers, and have come to represent
27 Sushirrito's made-to-order, fresh, and high quality hand-held sushi burritos and highly-efficient
28 service.

Defendant's Wrongful Conduct

18. Since at least as early as April 22, 2016, Defendant has used the Infringing Marks in connection with its sushi burrito restaurant in San Diego, California. On information and belief, Defendant has plans to open a second sushi burrito restaurant, and intends to continue to use the Infringing Marks in connection with this second sushi burrito outlet.

19. On August 14, 2015, Defendant filed an application with the U.S. Patent and Trademark Office (“USPTO”) for the POKIRRITO Word Mark, U.S. Serial No. 86,725,986, for “restaurant services, namely, providing of food and beverages for consumption on and off the premises.” Defendant’s application to register the POKIRRITO Word Mark was published for opposition by the USPTO on January 12, 2016.

20. On April 20, 2016, Buddha Boy notified Defendant that its use of its Infringing Marks in connection with its sushi burrito restaurant constituted infringement of its SUSHIRRITO Marks used in connection with its sushi burrito restaurant chain. Among other things, Buddha Boy demanded that Defendant: cease its use of the Infringing Marks in connection with sushi or sushi-related restaurant services; withdraw its application to the USPTO to register the POKIRRITO Word Mark; and change its POKIRRITO Logo to one that was not confusingly similar with the SUSHIRRITO Marks. Thereafter, on May 13, 2016, Defendant responded to Buddha Boy's demands, and indicated that it would not cease its use of the Infringing Marks.

21. Defendant's Infringing Marks bear a striking similarity to Buddha Boy's SUSHIRRITO Marks. Defendant's POKIRRITO Word Mark and Buddha Boy's SUSHIRRITO Word Mark are both composite word marks, consisting of one element that the general consuming public associates with sushi or raw fish, *i.e.*, "POKI" and "SUSHI," and consisting of a second element that represents a burrito, *i.e.*, "RRITO." As a result, Defendant's POKIRRITO Word Mark and Buddha Boy's SUSHIRRITO Word Mark are not only similar in sight, sound, and meaning, but share a similar commercial impression. Additionally, Defendant's POKIRRITO Logo and Buddha Boy's SUSHIRRITO Logo both feature the same concentric circle shapes, with orange, green, and yellow shapes against a white center. Defendant's Infringing Marks are not only confusingly similar to Buddha Boy's SUSHIRRITO Marks in terms of sight, sound,

1 meaning, and commercial impression, but also are used in connection with the exact same services
2 as the SUSHIRRITO Marks, *i.e.*, fast-casual, hand-held sushi burrito restaurant
3 concepts. Moreover, Defendant's Infringing Marks are used in the same channels of marketing as
4 Buddha Boy's SUSHIRRITO Marks, including but not limited to Facebook, Instagram, and
5 Twitter.

6 22. In addition to Defendant's use of the Infringing Marks in advertising and
7 promoting its sushi burrito restaurant on Facebook, Instagram, and Twitter, Defendant improperly
8 and extensively uses Buddha Boy's SUSHIRRITO Word Mark as a hashtag in connection with its
9 social media advertising on Facebook, Instagram, and Twitter. Because Buddha Boy also
10 frequently and consistently uses its SUSHIRRITO Word Mark as a hashtag as a part of its social
11 media advertising and promotional activities on Facebook, Instagram, and Twitter, Defendant's
12 wrongful use of the SUSHIRRITO Word Mark as a hashtag in connection with its advertising and
13 promotion of its Pokirrito brand is not only likely to co-mingle Buddha Boy and Defendant's
14 social media advertising campaigns and cause confusion among consumers, but is also an
15 intentional effort on behalf of Defendant to deceive consumers as to the source of Defendant's
16 goods, or into believing that there is an association and/or affiliation between Buddha Boy's and
17 Defendant's sushi burrito restaurants.

18 23. Based on the similarity between Defendant's Infringing Marks and Buddha Boy's
19 SUSHIRRITO Marks, Defendant's use of the Infringing Marks in connection with its sushi burrito
20 restaurant, as well as its improper use of the SUSHIRRITO Word Mark in connection with its
21 social media advertising, is likely to cause confusion or mistake among consumers as to an
22 association and/or affiliation between Defendant's Pokirrito sushi burrito restaurant and Buddha
23 Boy's Sushirrito sushi burrito restaurant chain, or mislead consumers into believing that
24 Defendant's restaurant services originate from and/or are affiliated with Buddha Boy's Sushirrito
25 sushi burrito brand.

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FIRST CLAIM FOR RELIEF**TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114**

24. Buddha Boy hereby realleges and incorporates by reference the preceding
allegations of this Complaint, as if fully set forth herein.

25. Buddha Boy's SUSHIRRITO Marks and the goodwill and originality of the
business associated with them are of great and significant value, and have become associated in
the minds of consumers not only with the Sushirrito brand's innovative sushi burritos, but also
with the fresh, high quality food and service offered at Sushirrito restaurants.

26. Without Buddha Boy's authorization or consent, and having knowledge of Buddha
Boy's prior rights in the SUSHIRRITO Marks, Defendant has intentionally and knowingly used
the Infringing Marks in connection with services offered to the consuming public.

27. Defendant's use of the Infringing Marks is likely to cause confusion and/or mistake
among the general consuming public as to the origin and/or association of Defendant's sushi
burrito restaurant, and is likely to mislead the consuming public into believing that the restaurant
services offered by Defendant originate from, are associated with, or are otherwise authorized by
Buddha Boy's Sushirrito restaurants, all to the damage and detriment of Sushirrito's reputation
and goodwill.

28. Defendant's use of the Infringing Marks in connection with its sushi burrito
concept, and to advertise and promote its restaurant services to the consuming public, was done
with the willful intent to trade on the reputation of the Sushirrito brand and/or to infringe the
SUSHIRRITO Marks.

29. Buddha Boy has no adequate remedy at law and, if Defendant's unlawful use of the
Infringing Marks and other activities are not enjoined, Buddha Boy will suffer irreparable harm
and injury to its goodwill and reputation.

SECOND CLAIM FOR RELIEF**FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION – 15 U.S.C. § 1125**

30. Buddha Boy hereby realleges and incorporates by reference the preceding
allegations of this Complaint, as if fully set forth herein.

1 31. Defendant's services offered in connection with the Infringing Marks are of the
2 same general nature and type as Buddha Boy's services offered at its Sushirrito restaurants; as
3 such, Defendant's use of the Infringing Marks is likely to cause confusion among the general
4 consuming public.

5 32. By intentionally using marks similar to the SUSHIRRITO Marks, Defendant's use
6 of the Infringing Marks in connection with services of the same type as Buddha Boy's services,
7 Defendant misleads the general consuming public as to the origin and source of Defendant's
8 services, and creates a likelihood of confusion by consumers as to an association and/or affiliation
9 between Defendant and Buddha Boy's similar restaurant services.

10 33. Moreover, by intentionally using Buddha Boy's SUSHIRRITO Word Mark as a
11 hashtag in connection with the advertising and promotion of services of the same type as Buddha
12 Boy's services, Defendant deceives the general consuming public as to the origin and source of
13 Defendant's services, and creates a likelihood of confusion by consumers as to an association
14 and/or affiliation between Defendant and Buddha Boy's similar restaurant services.

15 34. Defendant's aforesaid acts are in violation of Section 43(a) of the Lanham Act, 15
16 U.S.C. § 1125(a), in that Defendant's use of the Infringing Marks, as well as Defendant's other
17 wrongful conduct in connection with advertising and promoting its services, constitutes false
18 designation of origin and unfair competition.

19 35. Buddha Boy has no adequate remedy at law and, if Defendant's unlawful use of the
20 Infringing Marks and other activities are not enjoined, Buddha Boy will suffer irreparable harm
21 and injury to its goodwill and reputation.

THIRD CLAIM FOR RELIEF

COMMON LAW TRADEMARK INFRINGEMENT

24 36. Buddha Boy hereby realleges and incorporates by reference the preceding
25 allegations of this Complaint, as if fully set forth herein.

26 37. As a result of Buddha Boy's hard work and investments in promoting the Sushirrito
27 brand under its SUSHIRRITO Marks, Buddha Boy has built up valuable goodwill in the

1 SUSHIRRITO Marks. As such, the SUSHIRRITO Marks have become associated with the
2 Sushirrito brand, and its sushi burrito concept and high quality restaurant services.

3 38. Defendant's unauthorized use of the Infringing Marks is likely to and does cause
4 confusion among the consuming public as to an association and/or affiliation between Defendant
5 and Buddha Boy's sushi burrito restaurant services, and falsely suggests a connection with
6 Buddha Boy's Sushirrito restaurants.

7 39. Defendant's acts constitute willful infringement of Buddha Boy's exclusive rights
8 in the SUSHIRRITO Marks, in violation of state common law.

9 40. Buddha Boy does not have an adequate remedy at law, and will continue to be
10 damaged by Defendant's use of the Infringing Marks unless this Court enjoins Defendant's
11 unlawful activities.

12 **FOURTH CLAIM FOR RELIEF**

13 **COMMON LAW UNFAIR COMPETITION**

14 41. Buddha Boy hereby realleges and incorporates by reference the preceding
15 allegations of this Complaint, as if fully set forth herein.

16 42. As a result of Buddha Boy's hard work and investments in promoting the Sushirrito
17 brand under its SUSHIRRITO Marks, Buddha Boy has built up valuable goodwill in the
18 SUSHIRRITO Marks. As such, the SUSHIRRITO Marks have become associated with the
19 Sushirrito brand, its sushi burrito concept and its high quality restaurant services.

20 43. Defendant, with full knowledge of the SUSHIRRITO Marks, intended to and has
21 traded off of the goodwill and reputation associated with the SUSHIRRITO Marks and the
22 Sushirrito brand by using the Infringing Marks in connection with its services, and by wrongfully
23 using the SUSHIRRITO Word Mark in the advertising and promotion of such services.

24 44. Defendant's acts have misled and continue to mislead the consuming public as to
25 an association and/or affiliation between Defendant and Buddha Boy's sushi burrito services, and
26 falsely suggests a connection with Buddha Boy's Sushirrito restaurants.

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45. Buddha Boy does not have an adequate remedy at law, and will continue to be damaged by Defendant's use of the Infringing Marks unless this Court enjoins Defendant's unlawful activities.

PRAAYER FOR RELIEF

WHEREFORE, Buddha Boy respectfully requests entry of judgment in its favor and against Defendant on all of the above causes of action as follows:

1. That this Court preliminarily and permanently enjoin Defendant, its agents, servants, employees, attorneys and all persons in active concert or participation with any of them:

 - a. From using in any manner the SUSHIRRITO Marks, or any other designation that is confusingly similar to SUSHIRRITO or any of the SUSHIRRITO Marks, including, but not limited to the Infringing Marks, as to be likely to cause confusion or mistake among consumers in connection with restaurant services;
 - b. From committing any acts calculated to cause purchasers to believe that Defendant's services are associated with and/or affiliated with Buddha Boy's restaurant services, or otherwise approved by or connected with Buddha Boy's restaurant services; and
 - c. From otherwise competing unfairly with Buddha Boy in any manner.
 2. That this Court enter a judgment finding that Defendant's use of the Infringing Marks has caused and/or is likely to cause confusion among consumers as to an affiliation and/or association between Defendant and Buddha Boy's restaurant services;
 3. That this Court enter a judgment finding that Defendant has infringed, and willfully infringed, the SUSHIRRITO Marks;
 4. That this Court order Defendant to file with this Court and to serve upon Buddha Boy a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with any injunction resulting from this matter within thirty (30) days after service of such injunction; and
 5. That this Court grant such other and further relief as this Court may deem just, proper, and equitable under the circumstances.

1 DATED: August 12, 2016

Respectfully submitted,

2 DAVIS WRIGHT TREMAINE LLP

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4 By: s/ Eric S. Walters
Eric S. Walters

5 Attorneys for Plaintiff
6 Buddha Boy Foods, Inc.

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8 **JURY DEMAND**

9 Plaintiff hereby demands a trial by jury on all issues so triable.
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11 DATED: August 12, 2016

Respectfully submitted,

12 DAVIS WRIGHT TREMAINE LLP

13
14 By: s/ Eric S. Walters
Eric S. Walters

15 Attorneys for Plaintiff
16 Buddha Boy Foods, Inc.